

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

IN THE MATTER OF:

WILMINGTON MARINE SERVICE, INC.)	Complaint No. R4-2004-0014
801 SOUTH FRIES STREET)	For
WILMINGTON, CA 90744)	Administrative Civil Liability

WILMINGTON MARINE SERVICE, INC. IS HEREBY GIVEN NOTICE THAT:

1. Wilmington Marine Service, Inc. is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), may impose liability under § 13385 and § 13399.33(c) of the California Water Code (CWC).
2. A hearing concerning this Complaint will be held before the Regional Board or Regional Board Hearing Panel (Hearing Panel) within ninety days after service of this Complaint on Wilmington Marine Service, Inc.. Wilmington Marine Service, Inc. will be notified at least ten days in advance of the date, time and place of the hearing. Wilmington Marine Service, Inc. or Wilmington Marine Service, Inc.'s representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. The Regional Board will consider whether to affirm, reject or modify the proposed administrative civil liability or to refer the matter to the Attorney General for recovery of judicial civil liability.
4. In the event that Wilmington Marine Service, Inc. fails to comply with the requirements of this Complaint, the Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement.
5. Wilmington Marine Service, Inc., located at 801 South Fries Street, Wilmington, California is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No.97-03-DWQ, and NPDES No. CAS000001 (General Permit). This facility was enrolled in the General Permit on January 25, 1995. The facility's WDID Number is 419I 011361 and is identified as Wilmington Marine Service, Inc. (SIC 3732). The General Permit (Section B, No. 14) requires Wilmington Marine Service, Inc. to submit an annual report by July 1st of each year.

February 17, 2004

6. Pursuant to CWC § 13399.31, a Notice of Non-Compliance (NNC) was mailed to Wilmington Marine Service, Inc. on July 24, 2003 for failure to submit the 2002/03 storm water annual report. A Notice of Violation (NOV) was then mailed to Wilmington Marine Service, Inc. on August 29, 2003 for failing to submit the 2002/03 storm water annual report within 30 days of mailing of the NNC. The NOV warned Wilmington Marine Service, Inc. of the mandatory fines that are required to be assessed for failure to submit the storm water annual report. On September 2, 2003, Wilmington Marine Service, Inc. faxed correspondence to the Regional Board stating the non-submittal of the 2002/03 storm water annual report was due to an office fire. Regional Board staff responded on September 2, 2003, by directing facility operators to submit an annual report with documentation explaining the reason(s) for any incomplete sections. To date, the storm water annual report for 2002/03 has not been received. By not submitting the required storm water annual report, Wilmington Marine Service, Inc. violated provisions of the General Permit, the Federal Clean Water Act and the CWC.
7. CWC § 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. CWC § 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
8. Based on non-submittal of the 2002/03 annual report, Wilmington Marine Service, Inc. is alleged to have violated the General Permit for 231 days (July 1, 2003 to February 17, 2004) and is civilly liable for a total of 231 days of violation at a maximum of \$10,000 for each day in which the violation occurs.
9. CWC § 13399.33(c) provides that the Regional Board shall impose a minimum penalty of not less than \$1,000 on any person who fails to submit an annual report in accordance with CWC § 13399.31.
10. Pursuant to CWC § 13399.33(a)(2), the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed:
 - a. The nature, circumstances, extent, and gravity of the violation:
Wilmington Marine Service, Inc. has been given sufficient notice to submit the annual report. Wilmington Marine Service, Inc. has not responded appropriately to the notice and has not submitted the annual report for 231 days. Annual reports provide compliance information for permitted facilities and are essential for Regional Board staff in determining whether a facility operator is in compliance with the Permit. Therefore, no reduction in the civil liability is warranted.
 - b. Violator's ability to pay:
Wilmington Marine Service, Inc. has failed to provide the Regional Board with sufficient information to determine Wilmington Marine Service, Inc.'s ability to pay. The Regional Board feels that the penalty is correctly assessed; therefore, no reduction in the civil liability is warranted.

- c. Prior history of violations:
On August 17, 1998, Regional Board staff issued an NNC to Wilmington Marine Service, Inc for failure to submit their 1997/1998 annual report. On December 3, 1998, Regional Board staff mailed an NOV to Wilmington Marine Service, Inc. for failure to submit their 1997/1998 annual report. On August 17, 1998, Regional Board staff mailed an NNC to Wilmington Marine Service, Inc for failure to collect a storm water sample during the 1997/1998 wet season. On August 22, 2000, Regional Board staff mailed an NNC to Wilmington Marine Service, Inc. for failure to submit their 1999/2000 annual report. On October 10, 2000, the Regional Board staff mailed an NOV to Wilmington Marine Service, Inc. for failure to submit their 1999/2000 annual report. Both annual reports were submitted later.
 - d. Degree of culpability:
Wilmington Marine Service, Inc. is required under the General Permit (Section B, No. 14) to submit an annual report by July 1st every year. The Regional Board sent Wilmington Marine Service, Inc. an NNC and an NOV when Wilmington Marine Service, Inc.'s 2002/03 storm water annual report was not received. Wilmington Marine Service, Inc. faxed correspondence to the Regional Board stating the non-submittal of the 2002/03 storm water annual report was due to an office fire. Regional Board staff directed facility operators to submit an annual report with documentation explaining the reason(s) for any incomplete sections. To date, facility operators have not responded.
 - e. Savings resulting from the violation:
Regional Board staff have examined the cost savings from non-submittal of the storm water annual report and determined that it is at least \$1,000.
 - f. Other matters as justice may require: The Regional Board is unaware of any other matters that impact the decision on the amount of civil liability to be assessed in this matter.
- 11. After consideration of those factors, the Executive Officer proposes civil liability be imposed on Wilmington Marine Service, Inc. in the amount of \$3,750 (of this amount, \$1,000 represents the minimum mandatory penalty of CWC § 13399.33(c) for failing to submit a storm water annual report).
 - 12. CWC § 13399.33(d) provides that the Regional Board may recover from Wilmington Marine Service, Inc., the costs incurred by the Regional Board in this matter. The Regional Board charges a rate of \$70 per hour for staff cost recovery. As of February 17, 2004, staff spent 25 hours investigating Wilmington Marine Service, Inc.'s failure to comply with the annual report requirement of the General Permit. Staff costs to date incurred by the Regional Board total \$1,750.

PROPOSED CIVIL LIABILITY

PENALTY CATEGORY	CALCULATION	TOTAL
Non-compliance with Order No. 97-03 DWQ by failing to submit the 2002/03 annual report.	CWC § 13399.33: Minimum penalty of \$1,000 for failing to submit a storm water annual report.	\$ 1,000
Recovery of Staff Costs	(25 Hours)(\$70/Hour)	\$1,750
Avoided Cost	\$1,000	\$1,000
Recommended ACL		\$3,750

13. Wilmington Marine Service, Inc. may waive its right to a hearing. Should Wilmington Marine Service, Inc. choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver to the Regional Board at 320 West 4th Street, Suite 200, Los Angeles, CA 90013, to be received by the Regional Board by the close of business on March 22, 2004. If the hearing is waived, in order to satisfy the civil liability, a check in the amount of \$3,750 (payable to the State Water Resources Control Board-Storm Water Account) shall accompany the signed waiver.
14. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

If Wilmington Marine Service, Inc. has any questions, please contact Wendy Phillips at (213) 576-6618 or Ivar Ridgeway at (213) 620-2150.

Date

Dennis A. Dickerson
Executive Officer

WAIVER OF HEARING

By signing below and attaching a check for the amount of civil liability proposed in the Administrative Civil Liability Complaint No. R4-2004-0014, Wilmington Marine Service, Inc. waives the right to a hearing before the Regional Board. Wilmington Marine Service, Inc. understands that it is forgoing its right to argue against the allegations made by the Executive Officer in this Complaint, and against imposition of, and the amount of, civil liability imposed. Furthermore, Wilmington Marine Service, Inc. understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment will be due thirty days after the date of adoption.

Signature: _____

Name: _____

Position: _____
Wilmington Marine Service, Inc.

Date: _____